

Donald Phillips

From: Donald Phillips
Sent: Thursday, October 24, 2019 2:19 PM
To: Peter Romary
Cc: Donald Phillips
Subject: New Petition and Appendix
Attachments: Gerlach - GPD APPENDIX A.pdf; Gerlach- GPD AOC-CV-270 (04.2017) (1).pdf; Petition_for_Release_of_LEA_Recording--AOC-CV-270--PBA_FOP_Dan_Gerlach--Atty_Peter_Romary.pdf; 1118161 - Petition for Release of LEA Recording--Attachment A--PBA.FOP.Dan Gerlach--Atty.Peter Romary - 1 - COG.DOCX; 1118159 - Petition for Release of LEA Recording--proposed Order--PBA.FOP.Dan Gerlach matter--Atty.Peter Romary - 2 - COG.DOCX

Peter:

Please find attached your original proposed Petition and Appendix A and a revised Petition and Attachment A. I have also attached a proposed Consent Order for your consideration and review. What is the legal entity name of your "Fraternal Order of Police" client? I guessed that it is the one listed, but was not sure.

Please give me a call at your convenience to let me know your thoughts.

Thank you.
Donald

Donald K. Phillips
Assistant City Attorney
P.O. Box 7207
Greenville, NC 27835-7207
Tel: (252) 329-4426
Fax: (252) 329-4626
Email: dkphillips@greenvillenc.gov
Website: www.greenvillenc.gov



Find yourself in good company®

From: Peter Romary <peter.romary@qverity.com>
Sent: Wednesday, October 23, 2019 5:50 PM
To: Donald Phillips <DKPhillips@greenvillenc.gov>
Subject: New Petition and Appendix

Many thanks for your assistance, Don!

Please see attached -- if you can let me know the the best day for you, as I say, I can be there this Friday or next Monday or Tuesday.

You have been very kind and helpful with all of this and I am extremely grateful to you for all you have done for me and for my clients (which group seems to be growing by the minute) -- I look forward to going back to working with Hedge Funds as well as screening and recommending people for Judicial appointments (Federal and State -- especially if we do grow the number of Special Superior Court Judges for NC then I will have much more work in screening and selecting)

Very best wishes,

Peter

--

Peter Romary
Partner and General Counsel, QVerity
Managing Partner, QVerity Legal

APPENDIX A

As set forth in the petition to which this Appendix is incorporated by reference it is requested that the City of Greenville / Greenville Police Department shall release, to Peter Romary, Esq, any and all recordings created between the hours of 2100 on Wednesday 25th September, 2019 and 0230 on Thursday 26th September that show Mr. Dan Gerlach in the police / City of Greenville camera monitored area of Greenville NC as set forth below:

Specifically the footage / recordings sought are all video /recorded footage from static / pole mounted cameras showing:

*Views of the area outside of Sup Dogs, Greenville, NC between 2100-2250, Wednesday 25th September, especially any footage showing Mr. Dan Gerlach

*Any footage of the area outside of Club 519 Greenville, NC between 2240 and 0030, Wednesday 25th September-Thursday 26th September, especially any footage showing Mr. Dan Gerlach.

*Footage showing the outside of the front door of Club 519 between 0140-0200 Thursday September 26th especially any footage showing Mr. Dan Gerlach.

*Footage covering 212 E. Fifth Street, Greenville, NC between 0210 and 0230 (AM, early hours of 9-26-2019) as well as any other video showing the same area at the same time showing Mr. Dan Gerlach approaching, walking up to, entering a vehicle (believed to be a Gold colored Nissan) and then driving away from said location.

STATE OF NORTH CAROLINA

File No

Pitt County

In The General Court Of Justice
Superior Court Division**IN THE MATTER OF
CUSTODIAL LAW ENFORCEMENT AGENCY
RECORDING SOUGHT BY:**

Name Of Petitioner

1) Police Benevolent Assoc. of North Carolina, Inc

Address

2) Fraternal Order of Police
c/o Peter Romary, Law Office of Peter Romary
147 Ellsworth Manor Drive,

City, State, Zip

Hillsborough, NC 27278

Phone No.

919-359-1103

Fax No.

919-359-1192

Email Address

peter.romary@qverity.com

**PETITION FOR RELEASE OF
CUSTODIAL LAW ENFORCEMENT AGENCY
RECORDING**☐ G.S. 132-1.4A(f) – Person authorized to receive disclosure
(No Filing Fee Applies)☒ G.S. 132-1.4A(g) – General
(CVS Filing Fee Applies)

I, the above-named petitioner, request the release of a custodial law enforcement agency recording to Peter Romary, Attorney
state that at least some portion of the law enforcement agency recording was made in this county, and I further state the following:
All video /recorded footage from static / pole mounted cameras covering 212 E. Fifth Street, Greenville, NC between 0210 and
0230 (AM, early hours of 9-26-2019) as well as any other video showing the same area at the same time showing Mr. Dan Gerlach
approaching, walking up to, entering a vehicle (believed to be a Gold colored Nissan) and then driving away from said location.

Further we ask for release of all tapes / videos / recordings as set forth in Appendix A (attached hereto and fully incorporated
herein) containing the dates and times.

(Include date and approximate time of activity captured in the recording, or otherwise identify the activity with particularity sufficient to identify the
recording at issue.)

**CERTIFICATE OF SERVICE
ON HEAD OF CUSTODIAL LAW ENFORCEMENT AGENCY**

I certify that a filed copy of this Petition was served on the head of the custodial law enforcement agency as follows:

☒ Personal Delivery☐ By Regular Mail, US postage prepaid, addressed as follows:City of Greenville
Police Department
c/o Chief Mark Holtzman and Donald Phillips, Esq [Police Attorney]
500 S Greene Street,
Greenville, NC**CERTIFICATE OF SERVICE ON DISTRICT ATTORNEY**

I certify that a filed copy of this Petition was served on the District Attorney as follows (only required for general release):

☒ Personal Delivery☐ By Regular Mail, US postage prepaid, addressed as follows:The Honorable Faris C Dixon
District Attorney
Pitt County Courthouse
Greenville, NC

Date

Petitioner's Signature

STATE OF NORTH CAROLINA

File No.

19 CVS**PITT** CountyIn The General Court Of Justice
Superior Court Division**IN THE MATTER OF
CUSTODIAL LAW ENFORCEMENT AGENCY
RECORDING SOUGHT BY:**

Name Of Petitioner

**Police Benevolent Association of North Carolina, Inc. and
Fraternal Order of Police, North Carolina Labor Council**

Address

c/o Peter J. Romary, Esq.
Law Office of Peter Romary
147 Ellsworth Manor Drive

City, State, Zip

Hillsborough, NC 27278

Phone No.

(919) 359-1103

Fax No.

(919) 359-1192

Email Address

peter.romary@qverity.com**PETITION FOR RELEASE OF
CUSTODIAL LAW ENFORCEMENT AGENCY
RECORDING**☐ G.S. 132-1.4A(f) – Person authorized to receive disclosure
(No Filing Fee Applies)☒ G.S. 132-1.4A(g) – General
(CVS Filing Fee Applies)

I, the above-named petitioner, request the release of a custodial law enforcement agency recording to Peter J. Romary, Attorney. State that at least some portion of the law enforcement agency recording was made in this county, and I further state the following: Petitioners request all relevant video/recorded footage from static/pole mounted (traffic/public safety) cameras covering the area of 1) East Fifth Street and Reade Street in Greenville, NC and 2) East Fifth Street and Cotanche Street in Greenville, NC between approximately 9:00 pm on Wednesday, September 25, 2019 and 2:30 am on Thursday, September 26, 2019 showing Mr. Dan Gerlach in this area and otherwise approaching, walking up to, entering a vehicle (believed to be a gold colored Nissan), and then driving away from said location. Petitioners more specific request for release is stated in Attachment A, which is hereby made a part of this Petition.

(Please see Attachment A)

(Include date and approximate time of activity captured in the recording, or otherwise identify the activity with particularity sufficient to identify the recording at issue.)

**CERTIFICATE OF SERVICE
ON HEAD OF CUSTODIAL LAW ENFORCEMENT AGENCY**

I certify that a filed copy of this Petition was served on the head of the custodial law enforcement agency as follows:

- ☒ Personal Delivery
☐ By Regular Mail, US postage prepaid, addressed as follows:

Mark R. Holtzman
Chief of Police
Greenville Police Department
500 South Greene Street
Greenville, NC 27834Note: Also copied Assistant City Attorney Donald K. Phillips by email to: dkphillips@greenvillenc.gov**CERTIFICATE OF SERVICE ON DISTRICT ATTORNEY**

I certify that a filed copy of this Petition was served on the District Attorney as follows (only required for general release):

- ☒ Personal Delivery
☐ By Regular Mail, US postage prepaid, addressed as follows:

The Honorable Faris C. Dixon
Pitt County District Attorney
Pitt County Courthouse
100 West 3rd Street
Greenville, NC 27858

Date

Petitioner's Signature

Peter J. Romary, Attorney for Petitioners

STATE OF NORTH CAROLINA

COUNTY OF PITT

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.: 19 CVS _____

IN THE MATTER OF CUSTODIAL)
LAW ENFORCEMENT AGENCY)
RECORDING SOUGHT BY:)

ATTACHMENT A

POLICE BENEVOLENT ASSOCIATION)
OF NORTH CAROLINA, INC. and)
FRATERNAL ORDER OF POLICE,)
NORTH CAROLINA LABOR COUNCIL,)

Petitioners.)

As set forth in the Petition to which this Attachment is incorporated by reference, it is requested that the City of Greenville/Greenville Police Department shall release, to Petitioners, by and through their attorney, Peter J. Romary, Esq., any and all footage/recordings from static/pole mounted (traffic/public safety) cameras as set forth below:

1. Footage of the area outside of the area of Sup Dogs (East Fifth Street/Reade Street), Greenville, NC between approximately 9:00 pm to 10:50 pm on Wednesday, September 25, 2019, particularly any footage showing Mr. Dan Gerlach.

2. Footage of the area outside of the area of Club 519 (East Fifth Street/Cotanche Street), Greenville, NC between approximately 10:40 pm on Wednesday, September 25, 2019 to approximately 1:30 am on Thursday, September 26, 2019, particularly any footage showing Mr. Dan Gerlach.

3. Footage showing the area of (East Fifth Street/Cotanche Street), Greenville, NC between approximately 1:40 am to 2:00 am on Thursday, September 26, 2019, particularly any footage showing Mr. Dan Gerlach.

4. Footage showing the area of 212 East Fifth Street (East Fifth Street/Reade Street), Greenville, NC between approximately 2:00 am to 2:30 am on Thursday, September 26, 2019, particularly any footage showing Mr. Dan Gerlach, especially footage of Mr. Dan Gerlach approaching, walking up to, and entering a vehicle (believed to be a Gold colored Nissan) and then driving away from said location.

COUNTY OF PITT

FILE NO.: 19 CVS

**CONSENT ORDER
ON PETITION FOR RELEASE OF
CUSTODIAL LAW ENFORCEMENT
AGENCY RECORDING
N.C.G.S. § 132-1.4A(g)**

APPEARANCES

For Petitioners:	Peter J. Romary, Esq. The Law Office of Peter Romary 147 Ellsworth Manor Drive Hillsborough, North Carolina 27278 <i>Attorney for Petitioners, Police Benevolent Association of North Carolina, Inc. and Fraternal Order of Police, North Carolina Labor Council</i>
For Custodial Law Enforcement Agency and the Head of the Custodial Law Enforcement Agency:	Donald K. Phillips Assistant City Attorney City of Greenville 200 West Fifth Street Post Office Box 7207 Greenville, North Carolina 27835 <i>Counsel for City of Greenville (Greenville Police Department) and Designated Representative of Chief of Police Mark R. Holtzman (Head of Custodial Law Enforcement Agency)</i>
For Pitt County District Attorney's Office:	None Appearing

BASED UPON the careful consideration of the arguments presented at the hearing of this matter and the entire record in this proceeding, the undersigned makes the following findings of fact.

FINDINGS OF FACT

1. The Petitioners in this matter are Police Benevolent Association of North Carolina, Inc. and **Fraternal Order of Police, North Carolina Labor Council** ("Petitioners"). On October [REDACTED], 2019, on behalf of Petitioners, Petitioners' attorney, Peter J. Romary, Esq. of The Law Office of Peter Romary ("Mr. Romary"), filed a Petition for Release of Custodial Law Enforcement Agency Recording pursuant to N.C.G.S. § 132-1.4A(g) on a form approved by the Administrative Office of the Courts (AOC-CV-270) (the "Petition").

2. The City of Greenville (the "City"), is a municipal corporation organized and existing under the laws of the State of North Carolina.

3. Pursuant to Chapter 160A of the North Carolina General Statutes, the City has established, organized, and maintained an accredited law enforcement agency, the Greenville Police Department ("GPD"), with territorial jurisdiction and all law enforcement powers as authorized by statute, case law, and the common law of the State of North Carolina within the corporate limits of the City.

4. Petitioners seek footage from certain traffic/public safety cameras which are unrelated to any pending GPD criminal investigation.

5. The City and GPD consider Petitioners' Petition to be a request for traffic/public safety cameras recordings, as defined by N.C.G.S. § 132-1.4A(a)(6), which are not public record pursuant to N.C.G.S. § 132-1.4(c) and N.C.G.S. § 132-1.4A(b), and of which GPD owns or leases or whose personnel operates the equipment that created the recordings at the time the recordings were made.

6. GPD is the custodial law enforcement agency at issue in this matter as defined by N.C.G.S. § 132-1.4A(a)(2).

7. On or about October [REDACTED], 2019, in accordance with N.C.G.S. § 132-1.4A(g), Petitioners served a copy of the Petition upon Mark R. Holtzman, GPD Chief of Police, the head of the custodial law enforcement agency ("Chief Holtzman"), and upon the Honorable Faris C. Dixon, District Attorney for Prosecutorial District 3A, Pitt County ("District Attorney Dixon").

8. On or about October [REDACTED], 2019, the Petitioners also served a courtesy copy of same to Donald K. Phillips, Assistant City Attorney and the attorney for the City and GPD ("Mr. Phillips").

9. In accordance with N.C.G.S. § 132-1.4A(g), Chief Holtzman ("the head of the custodial law enforcement agency") was notified of the Petition and has been given an opportunity

to be heard, by and through his designated representative, Mr. Phillips (“and those persons, or their designated representative,” have been “given an opportunity to be heard”).

10. In accordance with N.C.G.S. § 132-1.4A(g), the City is unaware of any law enforcement agency personnel whose image or voice are in any of the recordings at issue. Accordingly, there are no law enforcement agency personnel subject to being notified and given an opportunity to be heard in this matter.

11. Each person entitled to be notified of this proceeding, was given an opportunity to be heard, either individually or by such person’s designated representative.

12. GPD has custody of the following seven (7) recordings, as defined by N.C.G.S. § 132-1.4A(a)(6), involving and/or related to Petitioners’ request and that are the subject of the Petition at issue:

GPD Recording				
No.	GPD File Name	Date	Type	Time
1.	TFC_GPD_5thReade_PTZ_R2 UPT_GPD_5thReade_Quad1_NE_R6a UPT_GPD_5thReade_Quad1_W_R6a	09/25/2019	Traffic/Public Safety Camera	9:20 pm-10:45 pm 9:20 pm-9:30 pm 9:20 pm-9:30 pm
2.	UPT_GPD_5thCotanche_Quad5_N_R6a UPT_GPD_5thCotanche_Quad5_E_R6a UPT_GPD_5thCotanche_Quad5_W_R6a	09/25/2019	Traffic/Public Safety Camera	10:41 pm-10:43 pm 10:41 pm-10:43 pm 10:41 pm-10:43 pm
3.	UPT_GPD_5thCotanche_Quad1_SE_R6a UPT_GPD_5thCotanche_Quad4_N_R6a UPT_GPD_5thCotanche_Quad4_S_R6a	09/25/2019	Traffic/Public Safety Camera	10:42 pm-10:46 pm 10:42 pm-10:46 pm 10:42 pm-10:46 pm
4.	UPT_GPD_5thCotanche_Quad4_SW_R6a UPT_GPD_5thCotanche_Quad4_W_R6a UPT_GPD_5thCotanche_Quad4_N_R6a UPT_GPD_5thCotanche_Quad4_S_R6a	09/26/2019	Traffic/Public Safety Camera	1:15 am-1:21am 1:15 am-1:21am 1:15 am-1:21am 1:15 am-1:21am
5.	UPT_GPD_5thCotanche_Quad1_S_R6a UPT_GPD_5thCotanche_Quad1_SE_R6a	09/26/2019	Traffic/Public Safety Camera	1:15 am-1:21am 1:15 am-1:21am
6.	UPT_GPD_5thCotanche_S_R2	09/26/2019	Traffic/Public Safety Camera	1:16am-1:17 and 1:47 am-1:56 am
7.	TFC_GPD_5thReade_PTZ_R2 TFC_GPD_5thReade_W_R2 UPT_GPD_5thReade_Quad1_NE_R6a UPT_GPD_5thReade_Quad1_W_R6a	09/26/2019	Traffic/Public Safety Camera	2:10 am-2:13 am

13. Herein defined GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7 are City traffic/public safety camera “recordings,” as defined by N.C.G.S. § 132-1.4A(a)(6)(“[a] visual, audio, or visual and audio recording captured by . . . any other video or audio recording device . . .”). The parties agree and stipulate to the release of GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7 in its entirety to Petitioners and Mr. Romary. The parties further agree and stipulate that GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7 in their entirety as herein defined are relevant to Petitioners’ and Mr. Romary’s request and are subject to release to Petitioners as defined by N.C.G.S. § 132-1.4A(a)(7) as further ordered herein.

14. All recordings at issue in this matter were made entirely in Pitt County, North Carolina.

15. The Court did not conduct an in-camera review of any recordings at issue in this case.

BASED UPON the foregoing findings of fact, the undersigned makes the following conclusions of law.

CONCLUSIONS OF LAW

1. The filing of this Petition is made in accordance with N.C.G.S. § 132-1.4A(g).

2. Each person entitled to be notified of the proceeding was given an opportunity to be heard, either individually or by such person’s designated representative.

3. To the extent that same exists, Petitioners have stated the date and approximate time of the activity captured in the recordings sought or have otherwise identified the activity with reasonable particularity sufficient to identify the recordings.

4. The Court has jurisdiction over the parties and the subject matter herein.

5. The Court has carefully reviewed N.C.G.S. § 132-1.4A in its entirety.

6. A “recording” is defined in N.C.G.S. § 132-1.4A(a)(6) as:

[a] visual, audio, or visual and audio recording captured by a body-worn camera, a dashboard camera, or any other video or audio recording device operated by or on behalf of a law enforcement agency or law enforcement agency personnel when carrying out law enforcement responsibilities. This term does not include any video or audio recordings of interviews regarding agency internal investigations or interviews or interrogations of suspects or witnesses.

7. “Release,” as defined by N.C.G.S. § 132-1.4A(a)(7), means “[t]o provide a copy of a recording.”

8. All of the recordings at issue (GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7) are records of criminal investigations and/or records of criminal intelligence information pursuant to N.C.G.S. § 132-1.4. Additionally, all recordings at issue are not public records pursuant to N.C.G.S. § 132-1.4(a) and N.C.G.S. § 132-1.4A(b). Accordingly, the recordings at issue contain information that is otherwise exempt from disclosure or release under North Carolina law.

9. Pursuant to N.C.G.S. § 132-1.4A(g), Petitioners and Mr. Romary seek release of all of the herein defined GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7.

10. N.C.G.S. § 132-1.4A(g) states in pertinent part:

In determining whether to order the release of all or a portion of the recording, in addition to any other standards the court deems relevant, the court shall consider the applicability of all of the following standards:

- (1) Release is necessary to advance a compelling public interest.
- (2) The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- (3) The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
- (4) Release would reveal information regarding a person that is of a highly sensitive personal nature.
- (5) Release may harm the reputation or jeopardize the safety of a person.
- (6) Release would create a serious threat to the fair, impartial, and orderly administration of justice.
- (7) Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
- (8) There is good cause shown to release all portions of a recording.

11. The Court has considered the standards set out in N.C.G.S. § 132-1.4A(g) and other standards the Court deems relevant in determining whether to order the release of all or a portion of the recordings at issue.

12. Pursuant to N.C.G.S. § 132-1.4A(g), “[t]he court shall release only those portions of the recording that are relevant to the person’s request and may place any conditions or restrictions on the release of the recording that the court, in its discretion, deems appropriate.”

The Court does hereby **ORDER, ADJUDGE, and DECREE** as follows:

1. That by stipulation, the parties agree that the herein defined GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7, which are relevant to the Petitioners’ request, should be released, as defined by N.C.G.S. § 132-1.4A(a)(7), to Petitioners and Mr. Romary as further ordered herein.

2. That upon payment by Petitioners of \$5.00 per DVD to the City of Greenville, pursuant to N.C.G.S. § 132-1.4A(l) and *The City of Greenville Manual of Fees* (available at: <https://www.greenvillenc.gov/home/showdocument?id=6918>), with a copy of the receipt emailed

or otherwise provided to Mr. Phillips, GPD shall provide to Petitioners within ten (10) business days from the satisfactory receipt of said payment receipt, the requisite number of DVDs containing the contents and portions of GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7 as herein identified and ordered.

SO ORDERED, this the _____ day of October, 2019.

Superior Court Judge Presiding

CONSENTED TO:

For Petitioners:

For Custodial Law Enforcement Agency and
the Head of the Custodial Law Enforcement
Agency:

Peter J. Romary, Esq.
The Law Office of Peter Romary

Donald K. Phillips
Assistant City Attorney

1118159v2

Donald Phillips

From: Donald Phillips
Sent: Thursday, October 24, 2019 5:43 PM
To: Peter Romary
Cc: Donald Phillips
Subject: REVISED: New Petition, Attachment A, and proposed Consent Order
Attachments: 1118161 - Petition for Release of LEA Recording--Attachment A--PBA.FOP.Dan Gerlach--Atty.Peter Romary - 1 - COG.DOCX; 1118159 - Petition for Release of LEA Recording--proposed Order--PBA.FOP.Dan Gerlach matter--Atty.Peter Romary - 2 - COG.DOCX; Petition_for_Release_of_LEA_Recording--AOC-CV-270--PBA_FOP_Dan_Gerlach--Atty_Peter_Romary.pdf

Peter:

Based upon our conversation a few moments ago, please find attached the revised Petition, Attachment A, and proposed Consent Order for your final approval.

As stated, I will be contacting Mark P. Henriques, Esq. of Womble Bond Dickinson (US) LLP (Attorneys for UNC System) and S. McKinley Gray, III, Esq. of Ward and Smith, P.A. (Attorneys for Dan Gerlach) tomorrow letting them know that this is being filed. City Attorney's Office will also be giving a courtesy call to ECU's General Counsel.

Thank you.
Donald

Donald K. Phillips
Assistant City Attorney
P.O. Box 7207
Greenville, NC 27835-7207
Tel: (252) 329-4426
Fax: (252) 329-4626
Email: dkphillips@greenvillenc.gov
Website: www.greenvillenc.gov



Find yourself in good company®

From: Donald Phillips
Sent: Thursday, October 24, 2019 2:19 PM
To: Peter Romary <peter.romary@qverity.com>
Cc: Donald Phillips <DKPhillips@greenvillenc.gov>
Subject: New Petition and Appendix

Peter:

Please find attached your original proposed Petition and Appendix A and a revised Petition and Attachment A. I have also attached a proposed Consent Order for your consideration and review. What is the legal entity name of your "Fraternal Order of Police" client? I guessed that it is the one listed, but was not sure.

Please give me a call at your convenience to let me know your thoughts.

Thank you.

Donald

Donald K. Phillips

Assistant City Attorney

P.O. Box 7207

Greenville, NC 27835-7207

Tel: (252) 329-4426

Fax: (252) 329-4626

Email: dkphillips@greenvillenc.gov

Website: www.greenvillenc.gov



From: Peter Romary <peter.romary@qverity.com>

Sent: Wednesday, October 23, 2019 5:50 PM

To: Donald Phillips <DKPhillips@greenvillenc.gov>

Subject: New Petition and Appendix

Many thanks for your assistance, Don!

Please see attached -- if you can let me know the the best day for you, as I say, I can be there this Friday or next Monday or Tuesday.

You have been very kind and helpful with all of this and I am extremely grateful to you for all you have done for me and for my clients (which group seems to be growing by the minute) -- I look forward to going back to working with Hedge Funds as well as screening and recommending people for Judicial appointments (Federal and State -- especially if we do grow the number of Special Superior Court Judges for NC then I will have much more work in screening and selecting)

Very best wishes,

Peter

--

Peter Romary

Partner and General Counsel, QVerity

Managing Partner, QVerity Legal

STATE OF NORTH CAROLINA
COUNTY OF PITT

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.: 19 CVS _____

IN THE MATTER OF CUSTODIAL)
LAW ENFORCEMENT AGENCY)
RECORDING SOUGHT BY:)
POLICE BENEVOLENT ASSOCIATION)
OF NORTH CAROLINA, INC. and)
NORTH CAROLINA FRATERNAL)
ORDER OF POLICE,)
Petitioners.)

ATTACHMENT A

As set forth in the Petition to which this Attachment is incorporated by reference, it is requested that the City of Greenville/Greenville Police Department shall release, to Petitioners, by and through their attorney, Peter J. Romary, Esq., any and all footage/recordings from static/pole mounted (traffic/public safety) cameras as set forth below:

1. Footage of the area outside of the area of Sup Dogs (East Fifth Street/Reade Street), Greenville, NC between approximately 9:00 pm to 10:50 pm on Wednesday, September 25, 2019, particularly any footage showing Mr. Dan Gerlach.
2. Footage of the area outside of the area of Club 519 (East Fifth Street/Cotanche Street), Greenville, NC between approximately 10:40 pm on Wednesday, September 25, 2019 to approximately 1:30 am on Thursday, September 26, 2019, particularly any footage showing Mr. Dan Gerlach.
3. Footage showing the area of (East Fifth Street/Cotanche Street), Greenville, NC between approximately 1:40 am to 2:00 am on Thursday, September 26, 2019, particularly any footage showing Mr. Dan Gerlach.
4. Footage showing the area of 212 East Fifth Street (East Fifth Street/Reade Street), Greenville, NC between approximately 2:00 am to 2:30 am on Thursday, September 26, 2019, particularly any footage showing Mr. Dan Gerlach, especially footage of Mr. Dan Gerlach approaching, walking up to, and entering a vehicle (believed to be a Gold colored Nissan) and then driving away from said location.

STATE OF NORTH CAROLINA
COUNTY OF PITT

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.: 19 CVS _____

IN THE MATTER OF CUSTODIAL)
LAW ENFORCEMENT AGENCY)
RECORDING SOUGHT BY:)
POLICE BENEVOLENT ASSOCIATION)
OF NORTH CAROLINA, INC. and)
NORTH CAROLINA FRATERNAL)
ORDER OF POLICE,)
Petitioners.)

CONSENT ORDER
ON PETITION FOR RELEASE OF
CUSTODIAL LAW ENFORCEMENT
AGENCY RECORDING
N.C.G.S. § 132-1.4A(g)

THIS MATTER came on to be heard before the undersigned Superior Court Judge upon the Petition for Release of Custodial Law Enforcement Agency Recording filed on October 25, 2019 by Petitioners, Police Benevolent Association of North Carolina, Inc. and North Carolina Fraternal Order of Police, pursuant to N.C.G.S. § 132-1.4A(g) to determine whether release of law enforcement agency recordings related to this matter is warranted under Chapter 132 of the North Carolina General Statutes.

APPEARANCES

For Petitioners:	Peter J. Romary, Esq. The Law Office of Peter Romary 147 Ellsworth Manor Drive Hillsborough, North Carolina 27278 <i>Attorney for Petitioners, Police Benevolent Association of North Carolina, Inc. and North Carolina Fraternal Order of Police</i>
For Custodial Law Enforcement Agency and the Head of the Custodial Law Enforcement Agency:	Donald K. Phillips Assistant City Attorney City of Greenville 200 West Fifth Street Post Office Box 7207 Greenville, North Carolina 27835 <i>Counsel for City of Greenville (Greenville Police Department) and Designated Representative of Chief of Police Mark R. Holtzman (Head of Custodial Law Enforcement Agency)</i>
For Pitt County District Attorney's Office:	None Appearing

BASED UPON the careful consideration of the arguments presented at the hearing of this matter and the entire record in this proceeding, the undersigned makes the following findings of fact.

FINDINGS OF FACT

1. The Petitioners in this matter are Police Benevolent Association of North Carolina, Inc. and North Carolina Fraternal Order of Police (“Petitioners”). On October 25, 2019, on behalf of Petitioners, Petitioners’ attorney, Peter J. Romary, Esq. of The Law Office of Peter Romary (“Mr. Romary”), filed a Petition for Release of Custodial Law Enforcement Agency Recording pursuant to N.C.G.S. § 132-1.4A(g) on a form approved by the Administrative Office of the Courts (AOC-CV-270) (the “Petition”).

2. The City of Greenville (the “City”), is a municipal corporation organized and existing under the laws of the State of North Carolina.

3. Pursuant to Chapter 160A of the North Carolina General Statutes, the City has established, organized, and maintained an accredited law enforcement agency, the Greenville Police Department (“GPD”), with territorial jurisdiction and all law enforcement powers as authorized by statute, case law, and the common law of the State of North Carolina within the corporate limits of the City.

4. Petitioners seek footage from certain traffic/public safety cameras which are unrelated to any pending GPD criminal investigation.

5. The City and GPD consider Petitioners’ Petition to be a request for traffic/public safety cameras recordings, as defined by N.C.G.S. § 132-1.4A(a)(6), which are not public record pursuant to N.C.G.S. § 132-1.4(c) and N.C.G.S. § 132-1.4A(b), and of which GPD owns or leases or whose personnel operates the equipment that created the recordings at the time the recordings were made.

6. GPD is the custodial law enforcement agency at issue in this matter as defined by N.C.G.S. § 132-1.4A(a)(2).

7. On or about October 25, 2019, in accordance with N.C.G.S. § 132-1.4A(g), Petitioners served a copy of the Petition upon Mark R. Holtzman, GPD Chief of Police, the head of the custodial law enforcement agency (“Chief Holtzman”), and upon the Honorable Faris C. Dixon, District Attorney for Prosecutorial District 3A, Pitt County (“District Attorney Dixon”).

8. On or about October 25, 2019, the Petitioners also served a courtesy copy of same to Donald K. Phillips, Assistant City Attorney and the attorney for the City and GPD (“Mr. Phillips”).

9. In accordance with N.C.G.S. § 132-1.4A(g), Chief Holtzman (“the head of the custodial law enforcement agency”) was notified of the Petition and has been given an opportunity

to be heard, by and through his designated representative, Mr. Phillips (“and those persons, or their designated representative,” have been “given an opportunity to be heard”).

10. In accordance with N.C.G.S. § 132-1.4A(g), the City is unaware of any law enforcement agency personnel whose image or voice are in any of the recordings at issue. Accordingly, there are no law enforcement agency personnel subject to being notified and given an opportunity to be heard in this matter.

11. Each person entitled to be notified of this proceeding, was given an opportunity to be heard, either individually or by such person’s designated representative.

12. GPD has custody of the following seven (7) recordings, as defined by N.C.G.S. § 132-1.4A(a)(6), involving and/or related to Petitioners’ request and that are the subject of the Petition at issue:

GPD Recording				
No.	GPD File Name	Date	Type	Time
1.	TFC_GPD_5thReade_PTZ_R2 UPT_GPD_5thReade_Quad1_NE_R6a UPT_GPD_5thReade_Quad1_W_R6a	09/25/2019	Traffic/Public Safety Camera	9:20 pm-10:45 pm 9:20 pm-9:30 pm 9:20 pm-9:30 pm
2.	UPT_GPD_5thCotanche_Quad5_N_R6a UPT_GPD_5thCotanche_Quad5_E_R6a UPT_GPD_5thCotanche_Quad5_W_R6a	09/25/2019	Traffic/Public Safety Camera	10:41 pm-10:43 pm 10:41 pm-10:43 pm 10:41 pm-10:43 pm
3.	UPT_GPD_5thCotanche_Quad1_SE_R6a UPT_GPD_5thCotanche_Quad4_N_R6a UPT_GPD_5thCotanche_Quad4_S_R6a	09/25/2019	Traffic/Public Safety Camera	10:42 pm-10:46 pm 10:42 pm-10:46 pm 10:42 pm-10:46 pm
4.	UPT_GPD_5thCotanche_Quad4_SW_R6a UPT_GPD_5thCotanche_Quad4_W_R6a UPT_GPD_5thCotanche_Quad4_N_R6a UPT_GPD_5thCotanche_Quad4_S_R6a	09/26/2019	Traffic/Public Safety Camera	1:15 am-1:21am 1:15 am-1:21am 1:15 am-1:21am 1:15 am-1:21am
5.	UPT_GPD_5thCotanche_Quad1_S_R6a UPT_GPD_5thCotanche_Quad1_SE_R6a	09/26/2019	Traffic/Public Safety Camera	1:15 am-1:21am 1:15 am-1:21am
6.	UPT_GPD_5thCotanche_S_R2	09/26/2019	Traffic/Public Safety Camera	1:16am-1:17 and 1:47 am-1:56 am
7.	TFC_GPD_5thReade_PTZ_R2 TFC_GPD_5thReade_W_R2 UPT_GPD_5thReade_Quad1_NE_R6a UPT_GPD_5thReade_Quad1_W_R6a	09/26/2019	Traffic/Public Safety Camera	2:10 am-2:13 am

13. Herein defined GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7 are City traffic/public safety camera “recordings,” as defined by N.C.G.S. § 132-1.4A(a)(6)(“[a] visual, audio, or visual and audio recording captured by . . . any other video or audio recording device . . .”). The parties agree and stipulate to the release of GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7 in its entirety to Petitioners and Mr. Romary. The parties further agree and stipulate that GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7 in their entireties as herein defined are relevant to Petitioners’ and Mr. Romary’s request and are subject to release to Petitioners as defined by N.C.G.S. § 132-1.4A(a)(7) as further ordered herein.

14. All recordings at issue in this matter were made entirely in Pitt County, North Carolina.

15. The Court did not conduct an in-camera review of any recordings at issue in this case.

BASED UPON the foregoing findings of fact, the undersigned makes the following conclusions of law.

CONCLUSIONS OF LAW

1. The filing of this Petition is made in accordance with N.C.G.S. § 132-1.4A(g).
2. Each person entitled to be notified of the proceeding was given an opportunity to be heard, either individually or by such person’s designated representative.
3. To the extent that same exists, Petitioners have stated the date and approximate time of the activity captured in the recordings sought or have otherwise identified the activity with reasonable particularity sufficient to identify the recordings.
4. The Court has jurisdiction over the parties and the subject matter herein.
5. The Court has carefully reviewed N.C.G.S. § 132-1.4A in its entirety.
6. A “recording” is defined in N.C.G.S. § 132-1.4A(a)(6) as:

[a] visual, audio, or visual and audio recording captured by a body-worn camera, a dashboard camera, or any other video or audio recording device operated by or on behalf of a law enforcement agency or law enforcement agency personnel when carrying out law enforcement responsibilities. This term does not include any video or audio recordings of interviews regarding agency internal investigations or interviews or interrogations of suspects or witnesses.
7. “Release,” as defined by N.C.G.S. § 132-1.4A(a)(7), means “[t]o provide a copy of a recording.”

8. All of the recordings at issue (GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7) are records of criminal investigations and/or records of criminal intelligence information pursuant to N.C.G.S. § 132-1.4. Additionally, all recordings at issue are not public records pursuant to N.C.G.S. § 132-1.4(a) and N.C.G.S. § 132-1.4A(b). Accordingly, the recordings at issue contain information that is otherwise exempt from disclosure or release under North Carolina law.

9. Pursuant to N.C.G.S. § 132-1.4A(g), Petitioners and Mr. Romary seek release of all of the herein defined GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7.

10. N.C.G.S. § 132-1.4A(g) states in pertinent part:

In determining whether to order the release of all or a portion of the recording, in addition to any other standards the court deems relevant, the court shall consider the applicability of all of the following standards:

- (1) Release is necessary to advance a compelling public interest.
- (2) The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- (3) The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
- (4) Release would reveal information regarding a person that is of a highly sensitive personal nature.
- (5) Release may harm the reputation or jeopardize the safety of a person.
- (6) Release would create a serious threat to the fair, impartial, and orderly administration of justice.
- (7) Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
- (8) There is good cause shown to release all portions of a recording.

11. The Court has considered the standards set out in N.C.G.S. § 132-1.4A(g) and other standards the Court deems relevant in determining whether to order the release of all or a portion of the recordings at issue.

12. Pursuant to N.C.G.S. § 132-1.4A(g), “[t]he court shall release only those portions of the recording that are relevant to the person’s request and may place any conditions or restrictions on the release of the recording that the court, in its discretion, deems appropriate.”

The Court does hereby **ORDER, ADJUDGE, and DECREE** as follows:

1. That by stipulation, the parties agree that the herein defined GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7, which are relevant to the Petitioners’ request, should be released, as defined by N.C.G.S. § 132-1.4A(a)(7), to Petitioners and Mr. Romary as further ordered herein.

2. That upon payment by Petitioners of \$5.00 per DVD to the City of Greenville, pursuant to N.C.G.S. § 132-1.4A(l) and *The City of Greenville Manual of Fees* (available at: <https://www.greenvillenc.gov/home/showdocument?id=6918>), with a copy of the receipt emailed

or otherwise provided to Mr. Phillips, GPD shall provide to Petitioners within ten (10) business days from the satisfactory receipt of said payment receipt, the requisite number of DVDs containing the contents and portions of GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7 as herein identified and ordered.

SO ORDERED, this the _____ day of October, 2019.

Superior Court Judge Presiding

CONSENTED TO:

For Petitioners:

For Custodial Law Enforcement Agency and
the Head of the Custodial Law Enforcement
Agency:

Peter J. Romary, Esq.
The Law Office of Peter Romary

Donald K. Phillips
Assistant City Attorney

1118159v2

STATE OF NORTH CAROLINA

File No.

19 CVS

PITT County

In The General Court Of Justice
Superior Court Division

IN THE MATTER OF CUSTODIAL LAW ENFORCEMENT AGENCY RECORDING SOUGHT BY:

Name Of Petitioner

Police Benevolent Association of North Carolina, Inc. and
North Carolina Fraternal Order of Police

Address

c/o Peter J. Romary, Esq.
Law Office of Peter Romary
147 Ellsworth Manor Drive

City, State, Zip

Hillsborough, NC 27278

Phone No.

(919) 359-1103

Fax No.

(919) 359-1192

Email Address

peter.romary@qverity.com

PETITION FOR RELEASE OF CUSTODIAL LAW ENFORCEMENT AGENCY RECORDING

☐ G.S. 132-1.4A(f) – Person authorized to receive disclosure
(No Filing Fee Applies)

☒ G.S. 132-1.4A(g) – General
(CVS Filing Fee Applies)

I, the above-named petitioner, request the release of a custodial law enforcement agency recording to Peter J. Romary, Attorney. State that at least some portion of the law enforcement agency recording was made in this county, and I further state the following: Petitioners request all relevant video/recorded footage from static/pole mounted (traffic/public safety) cameras covering the area of 1) East Fifth Street and Reade Street in Greenville, NC and 2) East Fifth Street and Cotanche Street in Greenville, NC between approximately 9:00 pm on Wednesday, September 25, 2019 and 2:30 am on Thursday, September 26, 2019 showing Mr. Dan Gerlach in this area and otherwise approaching, walking up to, entering a vehicle (believed to be a gold colored Nissan), and then driving away from said location. Petitioners more specific request for release is stated in Attachment A, which is hereby made a part of this Petition.

(Please see Attachment A)

(Include date and approximate time of activity captured in the recording, or otherwise identify the activity with particularity sufficient to identify the recording at issue.)

CERTIFICATE OF SERVICE ON HEAD OF CUSTODIAL LAW ENFORCEMENT AGENCY

I certify that a filed copy of this Petition was served on the head of the custodial law enforcement agency as follows:

- ☒ Personal Delivery
☐ By Regular Mail, US postage prepaid, addressed as follows:

Mark R. Holtzman
Chief of Police
Greenville Police Department
500 South Greene Street
Greenville, NC 27834

Note: Also copied Assistant City Attorney Donald K. Phillips by email to: dkphillips@greenvillenc.gov

CERTIFICATE OF SERVICE ON DISTRICT ATTORNEY

I certify that a filed copy of this Petition was served on the District Attorney as follows *(only required for general release)*:

- ☒ Personal Delivery
☐ By Regular Mail, US postage prepaid, addressed as follows:

The Honorable Faris C. Dixon
Pitt County District Attorney
Pitt County Courthouse
100 West 3rd Street
Greenville, NC 27858

Date

Petitioner's Signature

Peter J. Romary, Attorney for Petitioners

Donald Phillips

From: Peter Romary <peter.romary@qverity.com>
Sent: Thursday, October 24, 2019 7:55 PM
To: Donald Phillips
Subject: Re: REVISED: New Petition, Attachment A, and proposed Consent Order

Many thanks, Donald.

Would it be possible to let them know when I pick up the DVDs pursuant to the order, because at that point I will know that we had no last minute hiccups and also you can inform them, without any objections from me, that (if I can get the 5 copies -- I'll pay the \$25) a copy is either being sent / or is being given to the UNC Board of Governors (so that way they are fully apprised of where this went).

I also wondered (not just because it is a public record) if I could get a copy of the emails you sent to Mark and Ken Gray last week so that my clients can understand more fully why the courtesy calls were made to them, as they had made inquiries about the videos -- I doubt they will have any objections, nor should they as I know I would be very grateful for that courtesy.

I hope to be there at or around 10:30-10:45 and look forward to meeting you.

One final thing (again apologies) -- I know some folks don't have DVD players on their computers -- if I leave a flash drive there with your folks while over at the courthouse filing (it may have some other docs on) but do you think someone could also download onto there? It also makes it easier for me to make a copy onto my external HD which I use to back up.

Thanks again for all your help with this.

Very best wishes,

Peter

On Thu, Oct 24, 2019 at 5:43 PM Donald Phillips <DKPhillips@greenvillenc.gov> wrote:

Peter:

Based upon our conversation a few moments ago, please find attached the revised Petition, Attachment A, and proposed Consent Order for your final approval.

As stated, I will be contacting Mark P. Henriques, Esq. of Womble Bond Dickinson (US) LLP (Attorneys for UNC System) and S. McKinley Gray, III, Esq. of Ward and Smith, P.A. (Attorneys for Dan Gerlach) tomorrow letting them know that this is being filed. City Attorney's Office will also be giving a courtesy call to ECU's General Counsel.

Thank you.

Donald

Donald K. Phillips

Assistant City Attorney

P.O. Box 7207

Greenville, NC 27835-7207

Tel: (252) 329-4426

Fax: (252) 329-4626

Email: dkphillips@greenvillenc.gov

Website: www.greenvillenc.gov



From: Donald Phillips

Sent: Thursday, October 24, 2019 2:19 PM

To: Peter Romary <peter.romary@qverity.com>

Cc: Donald Phillips <DKPhillips@greenvillenc.gov>

Subject: New Petition and Appendix

Peter:

Please find attached your original proposed Petition and Appendix A and a revised Petition and Attachment A. I have also attached a proposed Consent Order for your consideration and review. What is the legal entity name of your "Fraternal Order of Police" client? I guessed that it is the one listed, but was not sure.

Please give me a call at your convenience to let me know your thoughts.

Thank you.

Donald

Donald K. Phillips

Assistant City Attorney

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Greenville, NC 27835-7207

Tel: (252) 329-4426

Fax: (252) 329-4626

Email: dkphillips@greenvillenc.gov

Website: www.greenvillenc.gov



From: Peter Romary <peter.romary@qverity.com>

Sent: Wednesday, October 23, 2019 5:50 PM

To: Donald Phillips <DKPhillips@greenvillenc.gov>

Subject: New Petition and Appendix

Many thanks for your assistance, Don!

Please see attached -- if you can let me know the the best day for you, as I say, I can be there this Friday or next Monday or Tuesday.

You have been very kind and helpful with all of this and I am extremely grateful to you for all you have done for me and for my clients (which group seems to be growing by the minute) -- I look forward to going back to working with Hedge Funds as well as screening and recommending people for Judicial appointments (Federal and State -- especially if we do grow the number of Special Superior Court Judges for NC then I will have much more work in screening and selecting)

Very best wishes,

Peter

--

Peter Romary

Partner and General Counsel, QVerity

Managing Partner, QVerity Legal

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--

Peter Romary

Partner and General Counsel, QVerity

Managing Partner, QVerity Legal

Donald Phillips

From: Peter Romary <peter.romary@qverity.com>
Sent: Thursday, October 24, 2019 8:08 PM
To: Donald Phillips
Subject: Re: REVISED: New Petition, Attachment A, and proposed Consent Order

Donald,

Apologies my friend — asking for extra DVDs; asking if can bring a flash drive.

When you call the attorneys for Gerlach, UNC System and ECU please feel free to tell them that the videos were obtained for the NC PBA and FoP and also at the behest of the National Associations.

The only people (not party to this) who do not wish to be mentioned at this time are the people from the legislature.

Many thanks!!

Peter

Sent from my iPhone

On Oct 24, 2019, at 5:43 PM, Donald Phillips <DKPhillips@greenvillenc.gov> wrote:

Peter:

Based upon our conversation a few moments ago, please find attached the revised Petition, Attachment A, and proposed Consent Order for your final approval.

As stated, I will be contacting Mark P. Henriques, Esq. of Womble Bond Dickinson (US) LLP (Attorneys for UNC System) and S. McKinley Gray, III, Esq. of Ward and Smith, P.A. (Attorneys for Dan Gerlach) tomorrow letting them know that this is being filed. City Attorney's Office will also be giving a courtesy call to ECU's General Counsel.

Thank you.
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Fax: (252) 329-4626
Email: dkphillips@greenvillenc.gov
Website: www.greenvillenc.gov

<image001.jpg>

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Cc: Donald Phillips <DKPhillips@greenvillenc.gov>
Subject: New Petition and Appendix

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Please give me a call at your convenience to let me know your thoughts.

Thank you.
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<image001.jpg>

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Very best wishes,

Peter

--

Peter Romary
Partner and General Counsel, QVerity
Managing Partner, QVerity Legal

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<1118161 - Petition for Release of LEA Recording--Attachment A--PBA.FOP.Dan Gerlach--
Atty.Peter Romary - 1 - COG.DOCX>

<1118159 - Petition for Release of LEA Recording--proposed Order--PBA.FOP.Dan Gerlach
matter--Atty.Peter Romary - 2 - COG.DOCX>

<Petition_for_Release_of_LEA_Recording--AOC-CV-270--PBA_FOP_Dan_Gerlach--
Atty_Peter_Romary.pdf>